



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIV
January 11, 2012

NUMBER 14
Pages 941 to 980

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2012

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 21 '11	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12
Jan. 6	Jan. 25	Feb. 14	Feb. 29	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 20	Feb. 8	Feb. 28	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 3	Feb. 22	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 17	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	***May 23***	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	***June 20***	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 23	June 13	July 3	July 18	July 20	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sep. 26	Dec. 24
June 20	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	***Aug. 29***	Sep. 19	Oct. 24	Jan. 21 '13
July 20	Aug. 8	Aug. 28	Sep. 12	Sep. 14	Oct. 3	Nov. 7	Feb. 4 '13
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Sep. 28	Oct. 17	Nov. 21	Feb. 18 '13
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '13
Aug. 29	Sep. 19	Oct. 9	Oct. 24	***Oct. 24***	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	***Nov. 7***	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	***Nov. 21***	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	***Dec. 5***	Dec. 26	Jan. 30 '13	Apr. 29 '13
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Dec. 5	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 20, 2012	February 8, 2012
17	Friday, February 3, 2012	February 22, 2012
18	Friday, February 17, 2012	March 7, 2012

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

ENVIRONMENTAL PROTECTION COMMISSION[567]

Annual reports of solid waste
environmental management
systems, ch 111
IAB 12/14/11 **ARC 9919B**

Conference Room 5E
Wallace State Office Building
Des Moines, Iowa

January 11, 2012
1 p.m.

INSURANCE DIVISION[191]

Unfair trade practices—annuity
disclosure, 15.61 to 15.68
IAB 12/28/11 **ARC 9941B**

Insurance Division Offices
330 Maple St.
Des Moines, Iowa

January 18, 2012
10 a.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Benefits; vesting,
amendments to chs 2, 4, 7, 11,
12, 14
IAB 12/28/11 **ARC 9951B**

IPERS
7401 Register Dr.
Des Moines, Iowa

January 17, 2012
9 a.m.

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Physical therapists and physical
therapist assistants—licensure,
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IAB 1/11/12 **ARC 9972B**

Fifth Floor Board Conference Room 526
Lucas State Office Bldg.
Des Moines, Iowa

January 31, 2012
8 to 8:30 a.m.

Social workers—supervision,
licensure, continuing education,
280.6, 280.7, 280.14(3), 281.2
IAB 12/28/11 **ARC 9946B**

Fifth Floor Conference Room 526
Lucas State Office Bldg.
Des Moines, Iowa

January 17, 2012
9 to 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Traffic safety improvement
program—application deadline,
164.9(1)“b”
IAB 1/11/12 **ARC 9968B**

First Floor South Conference Room
Administration Building
800 Lincoln Way
Ames, Iowa

February 2, 2012
10 a.m.
(If requested)

Federal motor carrier safety and
hazardous materials regulations,
520.1(1)
IAB 1/11/12 **ARC 9973B**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

February 2, 2012
10 a.m.
(If requested)

Commercial driver licensing,
607.3, 607.10, 607.50
IAB 1/11/12 **ARC 9955B**
(See also **ARC 9954B** herein)

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

February 2, 2012
10 a.m.
(If requested)

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 9953B**BANKING DIVISION[187]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Division of Banking hereby gives Notice of Intended Action to amend Chapter 2, “Application Procedures,” and to rescind Chapter 3, “Examinations,” Iowa Administrative Code.

This rule making proposes to rescind rules that are no longer necessary in light of statutory changes. Rule 187—2.11(17A) implements a section of the Iowa Code that has been repealed. Chapter 3 is no longer necessary because the subject matter addressed in the chapter is specifically addressed in the Iowa Code.

Interested persons may make written comments on the proposed amendments on or before January 31, 2012. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300, Des Moines, Iowa.

Waiver is not relevant to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 524.213 and 524.802(9).

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **187—2.11(17A)**.

ITEM 2. Rescind and reserve **187—Chapter 3**.

ARC 9964B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2011 Iowa Acts, House File 649, sections 11(2), 11(3), and 28(11), the Department of Human Services proposes to amend Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal maintenance-of-effort or “pass-along” requirements specified in Title XVI of the Social Security Act and in federal regulations at 20 CFR 416.2095 and 416.2096. Compliance with maintenance-of-effort requirements for state supplements is a condition of eligibility for state participation in the federal Medicaid program.

Iowa uses the payment levels method of compliance, which requires the Department to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum

HUMAN SERVICES DEPARTMENT[441](cont'd)

levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 3.6 percent for calendar year 2012.

Changes necessary to meet federal pass-along requirements for 2012 are as follows:

- Increasing the income limit and payment standard for a dependent relative from \$344 per month to \$357 per month.
- Increasing the income limits for eligibility for a dependent relative supplement by \$37 per month for an eligible individual (from \$1,018 to \$1,055) and by \$50 per month for an eligible couple (from \$1,355 to \$1,405).
- Increasing the family life home income limit by \$24 per month (from \$836 to \$860).
- Increasing the maximum family life home payment by \$22 per month (from \$743 to \$765).
- Increasing the maximum residential care per diem rate by \$0.78 (from \$28.14 to \$28.92).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments increase the residential care facility and family life home personal needs allowances by \$2 per month (from \$93 to \$95).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9965B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 31, 2012. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because the amendments, by increasing payment levels, benefit the people affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Acts, House File 649, sections 11 and 28.

ARC 9972B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy hereby gives Notice of Intended Action to amend Chapter 200, “Licensure of Physical Therapists and Physical Therapist Assistants,” and Chapter 202, “Discipline for Physical Therapists and Physical Therapist Assistants,” Iowa Administrative Code.

These proposed amendments clarify examination requirements, remove outdated language concerning foreign-trained applicants, remove outdated language for renewal to be consistent with Iowa Code chapter 147 and clarify that conviction of a crime includes when judgment of conviction or sentence was deferred.

Any interested person may make written comments on the proposed amendments no later than January 31, 2012, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail judith.manning@idph.iowa.gov.

A public hearing will be held January 31, 2012, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.34, 148A.4 and 272C.3.

The following amendments are proposed.

ITEM 1. Amend subrule 200.4(3) as follows:

200.4(3) Before the board may approve an applicant for testing beyond three attempts, an applicant shall reapply for licensure and shall demonstrate evidence satisfactory to the board of having successfully completed additional ~~clinical training or coursework, or both.~~

ITEM 2. Amend subparagraph **200.5(1)“a”(1)** as follows:

(1) If the degree is granted on or before January 31, 2004, the degree must be equivalent to at least a baccalaureate degree. ~~The baccalaureate program shall consist of a minimum of 60 hours of general education and 60 hours of professional education.~~

ITEM 3. Amend subrule 200.9(1) as follows:

200.9(1) The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Amend subrule 202.2(11) as follows:

202.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice physical therapy within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ARC 9968B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 164, “Traffic Safety Improvement Program,” Iowa Administrative Code.

This amendment proposes to change the application submittal deadline from June 15 to August 15 to allow applicants additional time to prepare applications and to shorten application approval times.

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning this proposed rule amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.

TRANSPORTATION DEPARTMENT[761](cont'd)

4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.

5. Be received by the Office of Policy and Legislative Services no later than January 31, 2012.

A meeting to hear requested oral presentations is scheduled for Thursday, February 2, 2012, at 10 a.m. at the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 312.2.

Proposed rule-making action:

Amend paragraph **164.9(1)“b”** as follows:

b. All complete applications received before ~~June~~ August 15 of each year shall be evaluated for funding.

ARC 9973B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year.

To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

The amendments to the FMCSR and the HMR that have become final and effective since the 2010 edition of the CFR are listed below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMR

Parts 390, 391, and 392 (FR Vol. 75, No. 186, Pages 59118-59136), 09-27-10

The Federal Motor Carrier Safety Administration (FMCSA) amended the Federal Motor Carrier Safety Regulations by prohibiting texting on electronic devices by commercial motor vehicle (CMV) drivers and imposed sanctions, including civil penalties and disqualification from operating CMVs.

TRANSPORTATION DEPARTMENT[761](cont'd)

Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA also amended its commercial driver's license (CDL) regulations to add to the list of disqualifying offenses a conviction under state or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Effective Date: October 27, 2010.

Part 393 (FR Vol. 75, No. 212, Pages 67634-67635), 11-03-10

The Federal Motor Carrier Safety Administration (FMCSA) confirmed the effective date of the direct final rule titled "Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems," published on September 21, 2010, in the Federal Register (75 FR 57393). This rule made permanent the existing requirement in the Federal Motor Carrier Safety Regulations that each trailer with an antilock brake system be equipped with an external malfunction indicator lamp. Effective Date: November 22, 2010.

Parts 171, 172, 173, 178, and 180 (FR Vol. 76, No. 12, Pages 3307-3389), 01-19-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport limited quantities, and vessel stowage requirements. These revisions were necessary to harmonize the Hazardous Materials Regulations with changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. Effective Date: January 19, 2011.

Parts 171 and 173 (FR Vol. 76, No. 21, Pages 5483-5494), 02-01-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations by incorporating provisions contained in certain widely used or longstanding cargo tank special permits that have established safety records. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations, provided an equivalent level of safety is maintained. Effective Date: March 3, 2011.

Part 177 (FR Vol. 76, No. 39, Pages 10771-10778), 02-28-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations by prohibiting texting on electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placards or any quantity of a select agent or toxin listed in the Department of Health and Human Services' "Select Agents and Toxins" regulations. Additionally, in accordance with requirements adopted on September 27, 2010, by the Federal Motor Carrier Safety Administration (FMCSA), motor carriers are prohibited from requiring or allowing drivers of covered motor vehicles to engage in texting while driving. Effective Date: March 30, 2011.

Part 395 (FR Vol. 76, No. 87, Pages 25588-25590), 05-05-11

The Federal Motor Carrier Safety Administration (FMCSA) amended the Federal Motor Carrier Safety Regulations to adopt regulatory language regarding hours of service (HOS) consistent with the statutory exemption authorized for certain railroad signal employees operating commercial motor vehicles (CMVs) in connection with railroad signal work. This action is in accordance with the Rail Safety Improvement Act of 2008 (RSIA of 2008), which took effect July 16, 2009. Effective Date: May 5, 2011.

Part 390 (FR Vol. 76, No. 98, Pages 29169-29170), 05-20-11

The Federal Motor Carrier Safety Administration (FMCSA) amended the Federal Motor Carrier Safety Regulations to extend until June 30, 2012, the compliance date of the requirement for drivers

TRANSPORTATION DEPARTMENT[761](cont'd)

and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of intermodal equipment (IME) when no damage, defects, or deficiencies are discovered by, or reported to, the driver. The previous compliance date was June 30, 2011. As a result of this action, drivers and carriers are not required to prepare no-defect DVIRs until June 30, 2012. This action is being taken to provide the FMCSA with sufficient time to address, through a notice-and-comment rule-making proceeding, a petition to rescind the requirement for no-defect DVIRs on intermodal equipment. Effective Date: May 20, 2011.

Parts 171 and 177 (FR Vol. 76, No. 109, Pages 32867-32873), 06-07-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) in coordination with the Federal Motor Carrier Safety Administration (FMCSA) approved the use of the National Fire Protection Association Standard (NFPA) 498—Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives (2010 Edition) for the construction and maintenance of safe havens used for unattended storage of Division 1.1, 1.2, and 1.3 explosives. Effective Date: July 7, 2011.

Part 172 (FR Vol. 76, No. 123, Pages 37283-37285), 06-27-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations by removing saccharin and its salts from the list of hazardous substances and reportable quantities. The U.S. Environmental Protection Agency (EPA) recently removed saccharin and its salts from its list of hazardous substances through notice-and-comment rule making, and this final rule harmonizes the lists to better enable shippers and carriers to identify the affected hazardous substances and comply with all applicable regulatory requirements. Effective Date: June 27, 2011.

Parts 107, 171, 172, 173, 177, 178, and 180 (FR Vol. 76, No. 139, Pages 43510-43532), 07-20-11

The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations to update and clarify certain regulatory requirements. These amendments are intended to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rule making, facilitate international commerce, and simplify the regulations. Effective Date: August 19, 2011.

Part 393 (FR Vol. 76, No. 177, Pages 56318-56322), 09-13-11

The Federal Motor Carrier Safety Administration (FMCSA) amended the Federal Motor Carrier Safety Regulations to eliminate the requirement for operational brakes on the last saddle-mounted truck or tractor in a triple saddle-mount combination, except when a full mount is present. This action is in response to a petition for rule making from the Automobile Carriers Conference (ACC) of the American Trucking Associations (ATA), which stated that this requirement degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking. Effective Date: October 13, 2011.

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than January 31, 2012.

TRANSPORTATION DEPARTMENT[761](cont'd)

A meeting to hear requested oral presentations is scheduled for Thursday, February 2, 2012, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. *Motor carrier safety regulations.* The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2010~~ 2011).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. *Hazardous materials regulations.* The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2010~~ 2011).

ARC 9955B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

These proposed amendments implement changes to the Federal Motor Carrier Safety Regulations that, effective January 30, 2012, require all applicants for a commercial driver's license (CDL), whether the CDL is initial, transferred, renewed or upgraded, to self-certify to the type of driving they engage in and to give the Department a copy of the driver's current medical examiner's certificate if the driver has certified to non-excepted interstate driving. Current CDL holders are required to complete a self-certification, and to submit a current medical examiner's certificate if certifying to non-excepted interstate driving, before January 30, 2014. The Department will post to the Commercial Driver's License Information System a medical status of “certified” for all persons who certify to non-excepted interstate driving and provide a medical examiner's certificate. Current CDL holders who fail to self-certify or provide a current medical examiner's certificate before January 30, 2014, and drivers certifying to non-excepted interstate driving who do not maintain their certified status by giving the Department a copy of each subsequently issued medical examiner's certificate or any associated medical variance before the previous certificate or variance expires will be subject to an immediate posting of their Commercial Driver's License Information System medical status as “not certified” and to a downgrade of their CDLs. The downgrade becomes effective 60 days after the expiration of the medical examiner's certificate or variance. A driver whose CDL privilege is removed may regain the privilege at any time by taking the action required to avoid the CDL downgrade, provided that the driver remains otherwise eligible for a CDL.

New definitions of “commercial driver's license,” “commercial driver's license downgrade,” “commercial driver's license information system driver's record,” “medical examiner,” “medical examiner's certificate,” “medical variance,” and “self-certification” are added to rule 761—607.3(321). These definitions are consistent with and not different from established federal definitions of these terms and are included in this chapter only for the purpose of reference and clarity in their use in the new “CDL downgrade” rule established in Item 4.

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments also update the citation in 49 Code of Federal Regulations (CFR) Part 383. The amendments to 49 CFR Part 383 that have become effective since the 2008 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Parts 383, 384, 390 and 391 (FR Vol. 73, No. 231, Page 73096, 12-1-08)

The Federal Motor Carrier Safety Administration amends the Federal Motor Carrier Safety Regulations to require interstate CDL holders subject to the physical qualification requirements to provide a current original or copy of their medical examiner's certificates to their state driver licensing agency. State driver licensing agencies are required to record on the Commercial Driver's License Information System driver's record the self-certification the driver made regarding the applicability of the federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule.

Parts 383, 384, 390, 391 and 392 (FR Vol. 75, No. 186, Page 59118, 9-27-10)

The Federal Motor Carrier Safety Administration prohibits texting by commercial motor vehicle drivers while they are operating in interstate commerce and imposes sanctions, including civil penalties and disqualification from operating commercial motor vehicles in interstate commerce, for drivers who fail to comply. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving.

Parts 383, 384 and 385 (FR Vol. 76, No. 89, Page 26854, 5-9-11)

The Federal Motor Carrier Safety Administration amends the CDL knowledge and skills testing standards and establishes new minimum federal standards for states to issue the commercial learner's permit. The final rule requires that a commercial learner's permit holder meet virtually the same requirements as a CDL holder.

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with 49 U.S.C. Section 31311.

Any person or agency may submit written comments concerning these amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than January 31, 2012.

A meeting to hear requested oral presentations is scheduled for Thursday, February 2, 2012, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9954B**. The content of that submission is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 321 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2011 — January 31, 2011	4.75%
February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%
April 1, 2011 — April 30, 2011	5.50%
May 1, 2011 — May 31, 2011	5.50%
June 1, 2011 — June 30, 2011	5.50%
July 1, 2011 — July 31, 2011	5.25%
August 1, 2011 — August 31, 2011	5.00%
September 1, 2011 — September 30, 2011	5.00%
October 1, 2011 — October 31, 2011	4.25%
November 1, 2011 — November 30, 2011	4.00%
December 1, 2011 — December 31, 2011	4.25%
January 1, 2012 — January 31, 2012	4.00%

ARC 9965B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2011 Iowa Acts, House File 649, sections 11(2), 11(3), 28(11), and 29(1), the Department of Human Services amends Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal maintenance-of-effort or “pass-along” requirements specified in Title XVI of the Social Security Act and in federal regulations at 20 CFR 416.2095 and 416.2096. Compliance with maintenance-of-effort requirements for state supplements is a condition of eligibility for state participation in the federal Medicaid program.

Iowa uses the payment levels method of compliance, which requires the Department to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 3.6 percent for calendar year 2012.

Changes necessary to meet federal pass-along requirements for 2012 are as follows:

- Increasing the income limit and payment standard for a dependent relative from \$344 per month to \$357 per month.
- Increasing the income limits for eligibility for a dependent relative supplement by \$37 per month for an eligible individual (from \$1,018 to \$1,055) and by \$50 per month for an eligible couple (from \$1,355 to \$1,405).
- Increasing the family life home income limit by \$24 per month (from \$836 to \$860).
- Increasing the maximum family life home payment by \$22 per month (from \$743 to \$765).
- Increasing the maximum residential care per diem rate by \$0.78 (from \$28.14 to \$28.92).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments increase the residential care facility and family life home personal needs allowances by \$2 per month (from \$93 to \$95).

The Council on Human Services adopted these amendments on December 14, 2011.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation on these amendments are unnecessary because these amendments merely implement the standard methodology for annually determining required eligibility and payment levels for the State Supplementary Assistance program. The Department finds that notice and public participation on these amendments are impracticable because the cost-of-living increase was announced so late in the year that insufficient time remains for a public notice period before the required implementation date. In addition, the Department finds that it would be contrary to the public interest for Iowa to be disqualified from participating in the Medicaid program.

The Department also finds, pursuant to Iowa Code sections 17A.5(2)“b”(1) and (2), that the normal effective date of these amendments should be waived because the amendments confer a benefit by increasing income limits and payments and because emergency rule making is authorized by 2011 Iowa Acts, House File 649, section 11.

These amendments are also published herein under Notice of Intended Action as **ARC 9964B** to allow for public comment.

These amendments do not provide for waivers in specified situations because the amendments, by increasing payment levels, benefit the people affected. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Acts, House File 649, sections 11 and 28.

These amendments became effective January 1, 2012.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) *Income.* Income of a dependent relative shall be less than ~~\$344~~ \$357. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) *Income from providing room and board.* In determining profit from furnishing room and board or providing family life home care, ~~\$344~~ \$357 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) *Protective living arrangement.* The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

\$743 <u>\$765</u>	Care allowance
\$93 <u>\$95</u>	Personal allowance
\$836 <u>\$860</u>	Total

52.1(2) *Dependent relative.* The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative	\$1018 <u>\$1,055</u>
b. Aged or disabled client, eligible spouse, and a dependent relative	\$1355 <u>\$1,405</u>
c. Blind client and a dependent relative	\$1040 <u>\$1,077</u>
d. Blind client, aged or disabled spouse, and a dependent relative	\$1377 <u>\$1,427</u>
e. Blind client, blind spouse, and a dependent relative	\$1399 <u>\$1,449</u>

ITEM 4. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) *Residential care.* Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~\$28.14~~ \$28.92. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 5. Amend subparagraph **52.1(3)“a”(2)** as follows:

(2) An allowance of ~~\$93~~ \$95 to meet personal expenses and Medicaid copayment expenses.

[Filed Emergency 12/20/11, effective 1/1/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9956B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment implements changes to medical assistance eligibility under the Iowa Family Planning Network (IFPN). These changes are mandated by 2010 Iowa Acts, chapter 1192 (House File 2526), section 11, subsection 24. Approval by the federal Centers for Medicare and Medicaid Services was expected by January 1, 2012, as part of the renewal of Iowa's family planning waiver. The amendment:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Limits eligibility to people who are uninsured or have health insurance that does not include family planning services, who are not otherwise enrolled in Medicaid (other than IowaCare), and who are not enrolled in the Children's Health Insurance Program (HAWK-I).

- Expands IFPN eligibility by specifying an upper age limit of 55, increasing the income limit from 200 percent of the federal poverty level to 300 percent of the federal poverty level, and including men. A statutory change was made by 2011 Iowa Acts, Senate File 482, to remove the word "women" from the provision authorizing eligibility for family planning services and substitute "individuals."

This amendment was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 10, 2011, as **ARC 9647B**. Notice of Intended Action to solicit comments on the amendment was published as **ARC 9648B** on the same date. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action and previously Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on December 14, 2011.

The Department finds that this amendment confers a benefit on applicants for family planning network coverage by making eligibility requirements more liberal. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement 2010 Iowa Acts, chapter 1192, section 11, subsection 24, and Iowa Code section 249A.3 as amended by 2011 Iowa Acts, Senate File 482, section 16.

This amendment became effective January 1, 2012, at which time the Adopted and Filed Emergency amendment was rescinded.

The following amendment is adopted.

Amend subrule 75.1(41) as follows:

75.1(41) ~~Women~~ *Persons eligible for family planning services under demonstration waiver.* Medical assistance for family planning services only shall be available to ~~women~~ as provided in this subrule.

a. Eligibility. The following are eligible for assistance under this coverage group if they are uninsured or have health insurance that does not include family planning services, are not otherwise enrolled in Medicaid (other than IowaCare), and are not enrolled in the Children's Health Insurance Program (HAWK-I):

(1) No change.

(2) Women who ~~are of~~ have reached childbearing age, are under 55 years of age, are capable of bearing children but are not pregnant, and have income that ~~does not exceed 200~~ 300 percent of the federal poverty level, as determined according to paragraph 75.1(41)"c."

(3) Men who are under 55 years of age, who are capable of fathering children, and who have income that does not exceed 300 percent of the federal poverty level, as determined according to paragraph 75.1(41)"c."

b. Application.

(1) No change.

(2) ~~Women~~ A person requesting assistance based on subparagraph 75.1(41)"a"(2) or 75.1(41)"a"(3) shall file an application as required in rule 441—76.1(249A).

c. Determining income eligibility. The department shall determine the countable income of a ~~woman~~ an applicant applying under subparagraph 75.1(41)"a"(2) or 75.1(41)"a"(3) as follows:

(1) to (4) No change.

(5) Disregard of changes. A ~~woman~~ person found to be income-eligible upon application or annual redetermination of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. No change.

[Filed Emergency After Notice 12/15/11, effective 1/1/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9957B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, Senate File 482, section 13(4), the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

One of the factors that precludes Medicaid eligibility is residence in a public institution, such as a jail or prison. 2011 Iowa Acts, Senate File 482, mandates suspension rather than cancellation of Medicaid eligibility when a person who is either elderly or disabled enters a public institution. This amendment sets the procedural requirements for that policy change. The expectation is that suspension of eligibility will allow for a streamlined process of reopening a person's Medicaid case when the person leaves the institution.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on October 19, 2011, as **ARC 9804B**. The Department received one comment on the Notice of Intended Action, from the Department of Corrections, which concerned forms and form completion. The Department has determined that no new forms will be necessary. The Department also received feedback from the Centers for Medicare and Medicaid Services stating that it is not permissible under federal Medicaid regulations to apply suspension only to SSI-related Medicaid eligibility.

In response to these comments, the Department has made the following changes to the amendment as published under Notice of Intended Action:

- Deleted subparagraphs (1) and (2) from paragraph 75.12(1)"c." The person may have been eligible for Medicaid on any basis before entering a public institution.
- Changed the wording of paragraph 75.12(1)"d" to "The person is eligible for medical assistance as an individual except for institutional status." The effect of adding "as an individual" is that a person who is not elderly or disabled may qualify for suspension only if the person is a pregnant woman or is under the age of 21. Adults who qualify for Medicaid only as part of a household with children will not have their benefits suspended, because the adults are no longer eligible for Medicaid while living apart from the children.
- Removed a reference to Form 470-5045 in subrule 75.12(3) and added new paragraph "a" to indicate the Department will be notified of a person's release and added new paragraph "b" as follows:
"b. All information available to the department indicates that the person is currently eligible for Iowa Medicaid as an individual."

A complete summary of the comments and the Department's responses is available on the Department's Web site at: <http://www.dhs.iowa.gov/policyanalysis/RulesPages/phcomm.htm>.

The Council on Human Services adopted this amendment on December 14, 2011.

The Department finds that this amendment confers a benefit on Medicaid members who are in a public institution for less than 12 months by removing the requirement to file a new application to regain eligibility for Medicaid. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment does not provide for waivers in specified situations because it confers a benefit and is mandated by the General Assembly. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment is intended to implement Iowa Code section 249A.3 and 2011 Iowa Acts, Senate File 482, division IX.

This amendment became effective on January 1, 2012.

The following amendment is adopted.

Amend rule 441—75.12(249A) as follows:

441—75.12(249A) Inmates of public institutions. A person is not eligible for medical assistance for any care or services received while the person is an inmate of a public institution. For the purpose of this rule, ~~the phrase~~ “inmate of a public institution” and “public institution” ~~is~~ are defined by 42 CFR Section ~~435.1009, 435.1010 as amended on November 10, 1994 to August 25, 2011.~~

75.12(1) Suspension. Medical assistance shall be suspended, rather than canceled, for the first 12 continuous calendar months that a person is an inmate of a public institution if all of the following conditions are met:

a. The department is notified of the person’s entry into the public institution through either:

(1) A monthly report which is provided to the department by the public institution and includes the person’s name, date of birth, and social security number and the date the person entered the institution; or

(2) Other verified notice received by the department.

b. The person has entered a public institution on or after January 1, 2012, and has been in the public institution for 30 days or more.

c. On the date of entry into the public institution, the person was a Medicaid member.

d. The person is eligible for medical assistance as an individual except for institutional status.

75.12(2) Coverage during suspension. While medical assistance is suspended, payment will be made only for services received while the person is not an inmate of a public institution.

75.12(3) Reinstatement. The Medicaid case for an inmate who is released from a public institution while Medicaid is suspended will be reopened without an application if both of the following conditions are met:

a. The department is notified of the person’s release from the public institution through either:

(1) A monthly report which is provided to the department by the public institution and includes the person’s name, date of birth, and social security number and the date the person was released from the institution; or

(2) Other verified notice received by the department.

b. All information available to the department indicates that the person is currently eligible for Iowa Medicaid as an individual.

This rule is intended to implement Iowa Code section 249A.3 and 2011 Iowa Acts, Senate File 482, division IX.

[Filed Emergency After Notice 12/15/11, effective 1/1/12]

[Published 1/11/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9961B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

At the request of the State Ombudsman’s Office, the Department is clarifying the conditions under which the Department may decline to release the location of a foster child to the child’s parents. This amendment requires evidence of a direct or indirect threat to harm the foster child or the foster parent or credible third-party information of a threat of harm to the foster child or the foster parent. The evidence

HUMAN SERVICES DEPARTMENT[441](cont'd)

must be documented in the child's case permanency plan. Any decision not to disclose the location of the foster child must be reviewed at least every six months when the plan is updated.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on October 5, 2011, as **ARC 9776B**. The Department received four comments on the Notice of Intended Action, two concerning the scope of the amendment, one concerning the frequency of review required in the amendment, and one concerning the format of the amendment.

In response to these comments, the Department has made the following changes to the amendment as published under Notice of Intended Action:

- The parts of the subrule are renumbered so that the second sentence of the published introductory paragraph becomes paragraph "b."
- The catchwords "Placement notification" are added to the subrule.
- In the paragraphs describing the reasons disclosure of the child's placement could be detrimental, "foster family" is substituted for "foster parent" to recognize that a threat of harm to another member of the foster family should be considered as well.

The Department declines to change the rule to require monthly review of the decision. The rule provides six months as the maximum interval, and the parents may request review at their discretion. The Department has reviewed other rules and does not find that changes need to be made at this time regarding other types of foster care placement.

A complete summary of the comments and the Department's responses is available on the Department's Web site at: <http://www.dhs.iowa.gov/policyanalysis/RulesPages/phcomm.htm>.

The Council on Human Services adopted this amendment on December 14, 2011.

The Department finds that this amendment confers a benefit on parents of children in foster care by clarifying the conditions to which they are subject. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment does not provide for waivers in specified situations since the decision not to disclose a foster child's location is based on the Department's judgment of the safety of the child and the foster family.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment became effective on December 15, 2011.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is adopted.

Amend subrule 202.12(2) as follows:

202.12(2) Placement notification.

a. The parents shall be notified of the location and nature of the child's placement, unless it is documented in the child's case record that to do so would be disruptive to the placement the conditions of this subrule are met.

(1) The department evaluates the situation and determines that notifying the child's parents of the location of the placement would be detrimental to the child's safety and well-being and to the stability of the child's placement due to:

1. Evidence of a direct or indirect threat to harm the foster child or the foster family; or
2. Credible third-party information of a threat of harm to the foster child or the foster family.

(2) The department includes a statement in the child's case permanency plan explaining the decision not to disclose the location of the child to the parents.

b. The decision not to disclose the location of a child's placement shall be reviewed at least every six months when the child's case permanency plan is revised.

[Filed Emergency After Notice 12/15/11, effective 12/15/11]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9954B**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17, the Department of Transportation, on December 13, 2011, adopted amendments to Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

These amendments implement changes to the Federal Motor Carrier Safety Regulations that, effective January 30, 2012, require all applicants for a commercial driver’s license (CDL), whether the CDL is initial, transferred, renewed or upgraded, to self-certify to the type of driving they engage in and to give the Department a copy of the driver’s current medical examiner’s certificate if the driver has certified to non-excepted interstate driving. Current CDL holders are required to complete a self-certification, and to submit a current medical examiner’s certificate if certifying to non-excepted interstate driving, before January 30, 2014. The Department will post to the Commercial Driver’s License Information System a medical status of “certified” for all persons who certify to non-excepted interstate driving and provide a medical examiner’s certificate. Current CDL holders who fail to self-certify or provide a current medical examiner’s certificate before January 30, 2014, and drivers certifying to non-excepted interstate driving who do not maintain their certified status by giving the Department a copy of each subsequently issued medical examiner’s certificate or any associated medical variance before the previous certificate or variance expires will be subject to an immediate posting of their Commercial Driver’s License Information System medical status as “not certified” and to a downgrade of their CDLs. The downgrade becomes effective 60 days after the expiration of the medical examiner’s certificate or variance. A driver whose CDL privilege is removed may regain the privilege at any time by taking the action required to avoid the CDL downgrade, provided that the driver remains otherwise eligible for a CDL.

New definitions of “commercial driver’s license,” “commercial driver’s license downgrade,” “commercial driver’s license information system driver’s record,” “medical examiner,” “medical examiner’s certificate,” “medical variance,” and “self-certification” are adopted in rule 761—607.3(321). These definitions are consistent with and not different from established federal definitions of these terms and are included in this chapter only for the purpose of reference and clarity in their use in the new “CDL downgrade” rule established in Item 4.

These amendments also update the citation in 49 Code of Federal Regulations (CFR) Part 383. The amendments to 49 CFR Part 383 that have become effective since the 2008 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Parts 383, 384, 390 and 391 (FR Vol. 73, No. 231, Page 73096, 12-1-08)

The Federal Motor Carrier Safety Administration amends the Federal Motor Carrier Safety Regulations to require interstate CDL holders subject to the physical qualification requirements to provide a current original or copy of their medical examiner’s certificates to their state driver licensing agency. State driver licensing agencies are required to record on the Commercial Driver’s License Information System driver’s record the self-certification the driver made regarding the applicability of the federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule.

Parts 383, 384, 390, 391 and 392 (FR Vol. 75, No. 186, Page 59118, 9-27-10)

The Federal Motor Carrier Safety Administration prohibits texting by commercial motor vehicle drivers while they are operating in interstate commerce and imposes sanctions, including civil penalties and disqualification from operating commercial motor vehicles in interstate commerce, for drivers who fail to comply. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving.

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Parts 383, 384 and 385 (FR Vol. 76, No. 89, Page 26854, 5-9-11)

The Federal Motor Carrier Safety Administration amends the CDL knowledge and skills testing standards and establishes new minimum federal standards for states to issue the commercial learner's permit. The final rule requires that a commercial learner's permit holder meet virtually the same requirements as a CDL holder.

These amendments are necessary to establish compliance with federal rules for minimum federal standards for commercial driver licensing, reporting and penalties. Pursuant to 49 U.S.C. Section 31311, a state must comply with minimum standards to avoid having amounts withheld from apportionment under 49 U.S.C. Section 31314. As provided in 49 U.S.C. Section 31314, 5 percent of a state's apportionment for Interstate Maintenance, National Highway System, and Surface Transportation Program may be withheld for a first year of noncompliance, and 10 percent of those apportionments may be withheld each year thereafter. The estimated first year amount would be \$14.9 million, and the estimated amount for each year thereafter would be \$29.7 million, based on 2010 apportionments. These amendments implement 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17, which was enacted to establish compliance with new federal minimum standards for licensing, reporting, and penalties that appear at 49 CFR Sections 383.71 and 383.73 and which requires compliance beginning January 30, 2012.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because notice and public participation would preclude compliance with the federal rules by January 30, 2012.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective January 30, 2012. The Department finds that these amendments confer a benefit or remove a potential restriction on Iowa CDL holders who operate in interstate commerce, as the amendments allow them to establish a "certified" status as required for interstate operation and to continue without potential interruption of their privilege to operate commercially in other states.

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with 49 U.S.C. Section 31311.

These amendments are also published herein under Notice of Intended Action as **ARC 9955B** to allow public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 321 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17.

These amendments shall become effective January 30, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **761—607.3(321)**:

"Commercial driver's license" or *"CDL"* means a license issued to an individual by a state or other jurisdiction of domicile, in accordance with the standards contained in 49 CFR Part 383, which authorizes the individual to operate a class of a commercial motor vehicle.

"Commercial driver's license downgrade" or *"CDL downgrade"* means either:

1. The driver changes the driver's self-certification of type of driving from non-excepted interstate to excepted interstate, non-excepted intrastate, or excepted intrastate driving, or
2. The department removed the CDL privilege from the driver's license.

"Commercial driver's license information system driver's record" or *"CDLIS driver's record"* means the electronic record of the individual's CDL driver's status and history stored by the state-of-record as part of the commercial driver's license information system established under 49 U.S.C. Section 31309.

"Medical examiner" means a person who is licensed, certified or registered, in accordance with applicable state laws and regulations, to perform physical examinations. The term includes but is not limited to doctors of medicine, doctors of osteopathy, physician assistants, advanced registered nurse practitioners, and doctors of chiropractic.

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“Medical examiner’s certificate” means a certificate completed and signed by a medical examiner under the provisions of 49 CFR Section 391.43.

“Medical variance” means a driver has received one of the following from the Federal Motor Carrier Safety Administration that allows the driver to be issued a medical certificate:

1. An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 CFR Part 381, Subpart C, or 49 CFR Section 391.62, or 49 CFR Section 391.64.
2. A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 CFR Section 391.49.

“Self-certification” means a written certification of which category of type of driving an applicant for a commercial driver’s license engages in or intends to engage in, from the following categories:

1. Non-excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR Part 391, and is required to obtain a medical examiner’s certificate by 49 CFR Section 391.45.
2. Excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR Section 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR Part 391, and is therefore not required to obtain a medical examiner’s certificate by 49 CFR Section 391.45.
3. Non-excepted intrastate. The person certifies that the person operates only in intrastate commerce and is subject to state driver qualification requirements.
4. Excepted intrastate. The person certifies that the person operates only in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements as set forth in Iowa Code section 321.449.

ITEM 2. Amend rule **761—607.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.174, 321.188 as amended by 2011 Iowa Acts, Senate File 205, sections 13 and 14, 321.191, 321.193 and 321.208 and 2011 Iowa Acts, Senate File 205, section 17.

ITEM 3. Amend rule 761—607.10(321) as follows:

761—607.10(321) Adoption of federal regulations.

607.10(1) Code of Federal Regulations. The department adopts the following portions of the Code of Federal Regulations which are referenced throughout this chapter of rules:

- a. 49 CFR Section 391.11 as adopted in 761—Chapter 520.
- b. 49 CFR Section 392.5 as adopted in 761—Chapter 520.
- c. The following portions of 49 CFR Part 383 (October 1, 2008 2011):
 - (1) Section 383.51(b), Disqualification for major offenses, and Section 383.51(a)(5), Reinstatement after lifetime disqualification.
 - (2) Subpart E—Testing and Licensing Procedures, which contains Sections 383.71-383.77.
 - (3) Subpart G—Required Knowledge and Skills, which contains Sections 383.110-383.123.
 - (4) Subpart H—Tests, which contains Sections 383.131-383.135.

607.10(2) Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

This rule is intended to implement Iowa Code sections 321.187, 321.188, 321.208 and 321.208A and 2011 Iowa Acts, Senate File 205, section 17.

ITEM 4. Adopt the following new rule 761—607.50(321):

761—607.50(321) Self-certification of type of driving and submission of medical examiner’s certificate.

607.50(1) Applicants for new, transferred, renewed or upgraded CDL.

- a. A person shall provide to the department a self-certification of type of driving if the person is applying for:

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- (1) An initial commercial driver's license,
- (2) A transfer of a commercial driver's license from a prior state of domicile to the state of Iowa,
- (3) Renewal of a commercial driver's license, or
- (4) A license upgrade for a commercial driver's license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license.

b. The self-certification shall be on a form or in a format, which may be electronic, as provided by the department.

607.50(2) *Enrollment of existing CDL holders.* Every person who holds a commercial driver's license on or after January 30, 2012, and up to January 30, 2014, and who has not otherwise made a self-certification of type of driving under subrule 607.50(1) shall make to the department a self-certification of type of driving. The self-certification may be made on or after January 30, 2012, but must be made no later than January 29, 2014.

607.50(3) *Submission of medical examiner's certificate by persons certifying to non-excepted interstate driving.* Every person who self-certifies to non-excepted interstate driving must give the department a copy of the person's current medical examiner's certificate. A person who fails to provide a required medical examiner's certificate shall not be allowed to proceed with an initial issuance, transfer, renewal, or upgrade of a license until the person gives the department a medical examiner's certificate that complies with the requirements of this subrule, or changes the person's self-certification of type of driving to a type other than non-excepted interstate driving. For persons submitting a current medical examiner's certificate, the department shall post a medical certification status of "certified" on the person's CDLIS driver's record. A person who self-certifies to a type of driving other than non-excepted interstate shall have no medical certification status on the CDLIS driver's record.

607.50(4) *Maintaining certified status.* To maintain a medical certification status of "certified," a person who self-certifies to non-excepted interstate driving must give the department a copy of each subsequently issued medical examiner's certificate valid for the person. The copy must be given to the department at least ten days before the previous medical examiner's certificate expires.

607.50(5) *CDL downgrade.* If the medical examiner's certificate or medical variance for a person self-certifying to non-excepted interstate driving expires or if the Federal Motor Carrier Safety Administration notifies the department that the person's medical variance was removed or rescinded, the department shall post a medical certification status of "not certified" to the person's CDLIS driver's record and shall initiate a downgrade of the person's commercial driver's license. The medical examiner's certificate of a person who fails to maintain a medical certification status of "certified" as required by subrule 607.50(4) shall be deemed to be expired on the date of expiration of the last medical examiner's certificate filed for the person as shown by the person's CDLIS driver's record. The downgrade will be initiated and completed as follows:

a. The department shall give the person written notice that the person's medical certification status is "not certified" and that the commercial driver's license privilege will be removed from the person's driver's license 60 days after the date the medical examiner's certificate or medical variance expired or the medical variance was removed or rescinded unless the person submits to the department a current medical certificate or medical variance or self-certifies to a type of driving other than non-excepted interstate.

b. If the person submits a current medical examiner's certificate or medical variance before the end of the 60-day period, the department shall post a medical certification status of "certified" on the person's CDLIS driver's record and shall terminate the downgrade of the person's commercial driver's license.

c. If the person self-certifies to a type of driving other than non-excepted interstate before the end of the 60-day period, the department shall not remove the commercial driver's license privilege from the person's driver's license, and the person will have no medical certification status on the person's CDLIS driver's record.

d. If the person fails to take the action in either paragraph 607.50(5) "b" or "c" before the end of the 60-day period, the department shall remove the commercial driver's license privilege from the

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person's driver's license and shall leave the person's medical certification status as "not certified" on the person's CDLIS driver's record.

607.50(6) *CDL downgrade of existing CDL holders who fail to enroll before January 30, 2014.* Every person subject to subrule 607.50(2) who fails to make a self-certification of type of driving or fails to give the department a copy of the person's medical examiner's certificate as required by subrule 607.50(3) before January 30, 2014, shall be subject to a CDL downgrade. The department shall post a medical certification status of "not certified" to the CDLIS driver's record and shall initiate a downgrade of the driver's commercial driver's license following the procedure set forth in subrule 607.50(5). In such cases, the 60-day period shall begin January 30, 2014, and the person shall be required to make an initial self-certification of type of driving to terminate the CDL downgrade and to avoid removal of the commercial driver's license privilege. The person's status and privilege under subrule 607.50(5) shall be determined according to the certification made or not made.

607.50(7) *Establishment or reestablishment of "certified" status.* A person who has no medical certification status or whose medical certification status has been posted as "not certified" on the person's CDLIS driver's record may establish or reestablish the status as "certified" by submitting a current medical examiner's certificate or medical variance to the department. A person who has failed to self-certify to a type of driving or has self-certified to a type of driving other than non-excepted interstate must also make a self-certification of type of driving to non-excepted interstate driving. The department shall then post a medical certification status of "certified" on the person's CDLIS driver's record.

607.50(8) *Reestablishment of the CDL privilege.* A person whose commercial driver's license privilege has been removed from the person's driver's license under the provisions of paragraph 607.50(5) "d" may reestablish the commercial driver's license privilege to the person's driver's license by either of the following methods:

a. Submitting a current medical examiner's certificate or medical variance to the department. A person who has failed to self-certify to a type of driving must also make an initial self-certification of type of driving to non-excepted interstate driving. The department shall then post a medical certification status of "certified" on the person's CDLIS driver's record and reestablish the commercial driver's license privilege to the person's driver's license, provided that the person otherwise remains eligible for a commercial driver's license.

b. Self-certifying to a type of driving other than non-excepted interstate. The department shall then reestablish the commercial driver's license privilege to the person's driver's license, provided that the person otherwise remains eligible for a commercial driver's license; the person will have no medical certification status on the driver's CDLIS driver's record.

607.50(9) *Change of type of driving.* A person may change the person's self-certification of type of driving at any time. As required by subrule 607.50(3), a person certifying to non-excepted interstate driving must give the department a copy of the person's current medical examiner's certificate prepared by a medical examiner.

607.50(10) *Record keeping.* The department shall comply with the medical record-keeping requirements set forth in 49 CFR Section 383.73.

This rule is intended to implement Iowa Code section 321.182; section 321.188 as amended by 2011 Iowa Acts, Senate File 205, sections 13 and 14; and 2011 Iowa Acts, Senate File 205, section 17.

[Filed Emergency 12/14/11, effective 1/30/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9958B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments increase reimbursement rates for home- and community-based services (HCBS) to reflect the appropriation of \$1.5 million for state fiscal year 2012 for this purpose. These amendments essentially restore the reductions in the waiver reimbursement limits that were implemented in December 2009 as a result of Executive Order 19. At that time, rate maximums were reduced by 2.5 percent for most waiver services. Maximums for home health aide, nursing, and interim medical monitoring and treatment performed by a home health agency were reduced by 5 percent.

These amendments were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9706B**. Notice of Intended Action to solicit comment on these amendments was published as **ARC 9707B** on the same date. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on December 14, 2011.

These amendments do not provide for waivers in specified situations because the changes are a benefit to the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments shall become effective on February 15, 2012, at which time the Adopted and Filed Emergency amendments are rescinded.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(q).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [79.1(1), 79.1(2), 79.1(15)] is being omitted. These amendments are identical to those published under Notice as **ARC 9707B** and Adopted and Filed Emergency as **ARC 9706B**, IAB 9/7/11.

[Filed 12/15/11, effective 2/15/12]

[Published 1/11/12]

[For replacement pages for IAC, see IAC Supplement 1/11/12.]

ARC 9959B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment adjusts Medicaid reimbursement for physician services when the services are provided in a health care facility setting instead of the physician's office, usually by decreasing payment for services rendered in a facility setting. This adjustment is consistent with similar practice in the Medicare program. 2011 Iowa Acts, House File 649, allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies on which the Department's appropriation for Medicaid was based.

The rationale for this change is that a physician's expense in rendering a service in a facility setting is usually less than it would be in an office setting. When services are rendered in the physician's office, the

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cost of the service reflects not just the physician's time, but also the various support and auxiliary services involved in maintaining the office and providing services to patients. When services are provided in another facility, these expenses are borne by the facility and are reflected in the facility's reimbursement.

The Iowa Medicaid Enterprise identified 1761 procedure codes that have different Medicare reimbursement when services are provided in a facility and has calculated the percentage differential in the two reimbursement amounts for each code. The Iowa Medicaid Enterprise has applied that percentage differential to the Iowa Medicaid physician fee schedule for the same procedure code to arrive at the Medicaid payment for the service when rendered in a facility setting.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9721B**. The amendment was also Adopted and Filed Emergency and was published as **ARC 9719B** on the same date.

The Department received one comment on the Notice of Intended Action from the Iowa Medical Society. The Society argues that:

- Adopting this amendment emergency was not in the public's interest; and
- Applying the Medicare standard of payment adjustments is not appropriate because Iowa Medicaid payments were already lower than Medicare payments (contrary to Iowa Code section 249A.20) and did not reflect physician practice expenses.

The state's budget situation created difficult choices. The Department believes that the choices made meet all legal requirements and will maintain access to services. The Department has an obligation to stay within its budget. Given that the effect of immediate implementation was reflected in the Department's budget appropriation, the Department had no option but to implement these changes as directed by the Legislature.

2011 Iowa Acts, House File 649, included the following language in section 141(l):

"Notwithstanding section 249A.20, for the fiscal year beginning July 1, 2012, the average reimbursement rate for health care providers eligible for use of the federal Medicare resource-based relative value scale reimbursement methodology under that section shall remain at the rate in effect on June 30, 2012; however, this rate shall not exceed the maximum level authorized by the federal government."

The "notwithstanding" language is clear direction from the Legislature for the Department not to apply the provisions of section 249A.20.

The Iowa Medicaid Enterprise (IME) examined several different options for applying the site-of-service differentials. Given the time frames involved, it was not feasible for the IME to do its own study to determine the exact physician expense involved with each of these codes. Since IME has not followed the annual changes in the Medicare resource-based relative value system fee schedule, it was determined that using the same "dollar" differential that Medicare utilizes for these services would also not be appropriate. A straight across-the-board percentage adjustment did not make sense, as the physician expense varies based on the type of service being performed.

Based on that review, the decision was made that following the same percentage differential used by Medicare was the most appropriate approach, as it is procedure code-specific and better represents the concept underlying the site-of-service adjustments. IME therefore applied a differential equal to the same percentage that Medicare applies for the specific code. Some codes affected by this change received a very minimal reduction and, in some cases, even a payment increase.

This rule making modifies the amendment Adopted and Filed Emergency and published under Notice of Intended Action in two ways:

- Because the site-of-service adjustments can result in an increased payment in the facility setting, references to a "reduction" or "reduced" payment are modified to refer to an "adjustment" or "adjusted" payment.
- The basis for the adjustment is specified in the text of the rule.

A complete summary of the comments and the Department's responses is available on the Department's Web site at: <http://www.dhs.iowa.gov/policyanalysis/RulesPages/phcomm.htm>.

The Council on Human Services adopted this amendment on December 14, 2011.

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This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment shall become effective February 15, 2012, at which time the Adopted and Filed Emergency amendment is rescinded.

The following amendment is adopted.

Amend paragraph 79.1(7)“b” as follows:

b. *Payment ~~reduction~~ adjustment for services rendered in facility settings.* ~~The~~ When a service is rendered in a facility setting, the fee schedule amount paid to physicians based on paragraph 79.1(7) “a” shall be reduced adjusted by an adjustment factor as determined by the department a percentage differential that is equal to the percentage difference between the Medicare nonfacility and facility fee schedule amounts for Iowa. For the purpose of this provision, a “facility” place of service (POS) is defined as any of the following:

- (1) Hospital inpatient unit (POS 21).
- (2) Hospital outpatient unit (POS 22).
- (3) Hospital emergency room (POS 23).
- (4) Ambulatory surgical center (POS 24).
- (5) Skilled nursing facility (POS 31).
- (6) Inpatient psychiatric facility (POS 51).
- (7) Community mental health center (POS 53).
- (8) Comprehensive inpatient rehabilitation (POS 61).

[Filed 12/15/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9960B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments:

- Reduce or eliminate Medicaid reimbursement for nonemergency services rendered in a hospital emergency room. The amount of reduction will depend on whether a member was referred to the emergency room by medical personnel.
- Implement a \$3 copayment from the Medicaid member for treatment of a nonemergency medical condition in a hospital emergency room (the same charge as for a physician visit). Copayment will not be charged if the member is admitted to the hospital for inpatient care.

These amendments are intended to reduce inappropriate use of hospital emergency rooms for treatment of nonemergency medical conditions. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. These changes are part of those recommended strategies.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9723B**. The amendments were also Adopted and Filed Emergency and were published as **ARC 9722B** on the same date.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department received one comment on the Notice of Intended Action from the Iowa Medical Society. The Society contends that:

- The amendment should not have been Adopted and Filed Emergency;
- The new policies could substantially reduce Medicaid payment to emergency room providers;
- There are no documented studies showing that such policies are effective in assuring more appropriate use of emergency room services;
- The sanction is a substantial payment reduction for what may often be a reasonable judgment call on the part of the referring and treating providers; and
- The amendment weakens Iowa's compliance with federal obligations, especially the duty to maintain access to services.

The Department holds that its action was a necessary response to legislative directive. Reimbursement to physicians who provide emergency room services is not affected. The Department understands that Medicaid members sometimes have little choice but to use the nearest emergency room. But if screening shows that there is not an emergency, the Department believes that other options are usually available and that the hospital can make appropriate referrals, rather than providing nonemergency services in the emergency room. The Department does not believe that data analysis is needed because this change will reduce payments only to the extent there is inappropriate emergency room use.

A complete summary of the comments and responses is available on the Department's policy Web site at: <http://www.dhs.iowa.gov/policyanalysis/RulePages/phcomm.htm>.

These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 14, 2011.

These amendments do not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments shall become effective February 15, 2012, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.1(13)“g”** as follows:

g. Copayment charges are not applicable for a member receiving inpatient care in a hospital, nursing facility, state mental health institution, or other medical institution if the person is required, as a condition of receiving services in the institution, to spend for costs of necessary medical care all but a minimal amount of income for personal needs.

ITEM 2. Adopt the following new paragraph **79.1(13)“n”**:

n. The member shall pay a \$3 copayment for each visit to a hospital emergency room for treatment that does not meet the criteria for an emergency service as defined in paragraph 79.1(13)“k.” This \$3 copayment shall not apply if the visit to the emergency room results in a hospital admission.

ITEM 3. Amend subparagraph **79.1(16)“c”(4)**, table of payment status indicators, row “V,” as follows:

Indicator	Item, Code, or Service	OPPS Payment Status
V	Clinic or emergency department visit	If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment; subject to limits on nonemergency services provided in an emergency room pursuant to 79.1(16)“r.”

HUMAN SERVICES DEPARTMENT[441](cont'd)

		If not covered by Iowa Medicaid, the service is not paid under OPSS APC or any other Medicaid payment system.
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ITEM 4. Adopt the following new paragraph **79.1(16)“r”**:

r. Services delivered in the emergency room. Payment to a hospital for assessment of any Medicaid member in an emergency room shall be made pursuant to fee schedule. Payment treatment of a Medicaid member in an emergency room shall be made as follows:

(1) If the emergency room visit results in an inpatient hospital admission, the treatment provided in the emergency room is paid for as part of the payment for the inpatient services provided.

(2) If the emergency room visit does not result in an inpatient hospital admission but involves emergency services as defined in paragraph 79.1(13)“k,” payment for treatment provided in the emergency room shall be made at the full APC payment for the treatment provided.

(3) If the emergency room visit does not result in an inpatient hospital admission and does not involve emergency services as defined in paragraph 79.1(13)“k,” payment for treatment provided in the emergency room depends on whether the member had a referral to the emergency room and on whether the member is participating in the MediPASS program.

1. For members not participating in the MediPASS program who were referred to the emergency room by appropriate medical personnel and for members participating in the MediPASS program who were referred to the emergency room by their MediPASS primary care physician, payment for treatment provided in the emergency room shall be made at 75 percent of the APC payment for the treatment provided.

2. For members not participating in the MediPASS program who were not referred to the emergency room by appropriate medical personnel, payment for treatment provided in the emergency room shall be made at 50 percent of the APC payment for the treatment provided.

3. For members participating in the MediPASS program who were not referred to the emergency room by their MediPASS primary care physician, no payment will be made for treatment provided in the emergency room.

[Filed 12/15/11, effective 2/15/12]

[Published 1/11/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9963B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 92.21, the Labor Commissioner hereby amends Chapter 32, “Child Labor,” Iowa Administrative Code.

The amendments make an editorial change and create a new exemption allowing youth aged 16 and 17 to drive golf carts.

The principal reason for adoption of these amendments is to implement legislative intent.

Notice of Intended Action was published in the October 5, 2011, Iowa Administrative Bulletin as **ARC 9758B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

No variance procedures are included in these rules because variance provisions are set forth in 875—Chapter 1.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 92.

These amendments shall become effective on February 15, 2012.

The following amendments are adopted.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Amend paragraph **32.8(2)“a,”** introductory paragraph, as follows:

a. ~~The following exemption is for occupations~~ “Occupations of motor vehicle driver and helper” does not include:

ITEM 2. Amend subparagraph **32.8(2)“a”(2)** as follows:

(2) ~~Reserved.~~ During daylight hours, a child who is 16 or 17 years of age driving a golf cart on or across a golf course or a private or public roadway that crosses a golf course if the child has passed a state-approved driver education class; the child holds a full license, an intermediate license, or a Class C noncommercial operator’s license; and the child has been trained on use of the golf cart.

[Filed 12/20/11, effective 2/15/12]

[Published 1/11/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9952B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.5, the Board of Medicine hereby amends Chapter 25, “Contested Case Proceedings,” Iowa Administrative Code.

The purpose of Chapter 25 is to provide rules for the administration of contested cases before the Board. The amendments require that hearing panels have six members. The amendments also allow parties in contested cases before the Board to present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.

The Board approved the Notice of Intended Action on September 23, 2011. Notice of Intended Action was published in the Iowa Administrative Bulletin on October 19, 2011, as **ARC 9807B**. At a public hearing held November 8, 2011, from 4 to 5 p.m., the Board received comments from Leah J. McWilliams of the Iowa Osteopathic Medical Association; Heidi Goodman of the Iowa Medical Society; Connie Diekema of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, law firm; and David Brown of Hansen, McClintock & Riley, law firm. In response to comments, the following change was made to a proposed amendment to 25.18(6): The phrase “Subject to terms and conditions prescribed by the presiding officer” was inserted at the beginning of the last sentence, “Parties may present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.”

These amendments were adopted by the Board on December 8, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 272C.

These amendments will become effective on February 15, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 25.18(1) as follows:

25.18(1) ~~A hearing may be~~ Hearings are conducted before a quorum of the board or a panel of not less than three members of the board, at least two of whom are licensed by the board. When a sufficient number of board members is unavailable to hear a contested case, the executive director, or the executive director’s designee, may request alternate members, as defined in rule 653—1.1(17A,147) and Iowa Code ~~section~~ sections 148.2A and 148.7(4), to serve on the hearing panel. A hearing panel containing alternate members must include at least six people, of whom ~~the majority shall be members licensed to practice under Iowa Code chapter 148~~ a majority must be board members, a majority must be members licensed to practice medicine under Iowa Code chapter 148, and no more than three may be public members.

ITEM 2. Amend subrule 25.18(6) as follows:

25.18(6) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in

MEDICINE BOARD[653](cont'd)

oral argument. Subject to terms and conditions prescribed by the presiding officer, parties may present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.

[Filed 12/14/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9967B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 152D.5, the Board of Athletic Training hereby amends Chapter 351, "Licensure of Athletic Trainers," and Chapter 353, "Discipline for Athletic Trainers," Iowa Administrative Code.

Item 1 rescinds the requirement that the Board send a renewal notice by regular mail to licensees to be consistent with Iowa law and the online renewal system.

Item 2 clarifies that conviction of a crime includes when the judgment of conviction or sentence was deferred. In addition, the amendment changes the word "felony" to "crime" to be consistent with the Iowa Code chapter 147 requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9677B** on August 24, 2011. A public hearing was held on September 15, 2011, in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comment was received in opposition to these amendments. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 147, 152D and 272C.

These amendments will become effective February 15, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 351.9(1) as follows:

351.9(1) The biennial license renewal period for a license to practice athletic training shall begin on March 1 of each odd-numbered year and end on February 28 of the next odd-numbered year. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 2. Amend subrule 353.2(12) as follows:

353.2(12) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice ~~as an athletic trainer within the profession, regardless of whether the judgment of conviction or sentence was deferred.~~ A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 12/21/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9962B**REGENTS BOARD[681]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 5, "State Hygienic Laboratory," rescinds Chapter 12, "University of Iowa Organization and General Rules," and adopts new Chapter 12 with the same title, and amends Chapter 14, "University of Northern Iowa Organization and General Rules," and Chapter 16, "Iowa School for the Deaf Organization and General Rules," Iowa Administrative Code.

The amendments in Items 1, 2 and 3 update Chapter 5 pertaining to the State Hygienic Laboratory. The amendments clarify the mission of the laboratory, who may submit specimens for analysis, and the process for waiving or deferring fees. The amendment in Item 4 rescinds Chapter 12 in its entirety and adopts a new chapter containing updated rules for the University of Iowa. Existing Chapter 12 has become outdated and does not reflect the current administrative organization of the University. New Chapter 12 also updates references to the University's Operations Manual and provides links to current practices and procedures. Items 5 and 6 update Chapter 14 pertaining to the University of Northern Iowa to reflect the current mission and administrative structure of UNI. Items 7 to 10 update Chapter 16 to reflect the mission and the current administrative structure and processes of the Iowa School for the Deaf.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 2, 2011, as **ARC 9823B**. A comment period was established. No comments were received. The adopted amendments are identical to the proposed amendments.

The Board of Regents adopted the amendments on December 8, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 262, 263, 268 and 270.

These amendments shall become effective on February 15, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.1, 5.3, Ch 12, 14.1, 14.2, 16.1, 16.6, 16.8] is being omitted. These amendments are identical to those published under Notice as **ARC 9823B**, IAB 11/2/11.

[Filed 12/20/11, effective 2/15/12]

[Published 1/11/12]

[For replacement pages for IAC, see IAC Supplement 1/11/12.]

ARC 9966B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 10, "Interest, Penalty, Exceptions to Penalty and Jeopardy Assessments," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIV, No. 10, p. 696, on November 16, 2011, as **ARC 9856B**.

Item 1 adds new subrule 10.2(31) to provide the rate of interest on interest-bearing taxes for the calendar year 2012.

Item 2 amends subrule 42.22(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital fund for investments made on or after January 1, 2011, for Iowa individual income tax.

REVENUE DEPARTMENT[701](cont'd)

Item 3 adds new subrule 42.22(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa individual income tax.

Item 4 amends the implementation sentence for rule 701—42.22(15E,422).

Item 5 amends subrule 52.21(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital fund for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 2.

Item 6 adds new subrule 52.21(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 3.

Item 7 amends the implementation sentence for rule 701—52.21(15E,422).

Item 8 amends subrule 58.11(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital fund for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 2 and 5.

Item 9 adds new subrule 58.11(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 3 and 6.

Item 10 amends the implementation sentence for rule 701—58.11(15E,422).

These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code sections 15E.42, 15E.43, 422.33 and 422.60 as amended by 2011 Iowa Acts, Senate File 517; 2011 Iowa Acts, Senate File 517, section 40; and Iowa Code section 421.7.

These amendments will become effective February 15, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 10, 42, 52, 58] is being omitted. These amendments are identical to those published under Notice as **ARC 9856B**, IAB 11/16/11.

[Filed 12/21/11, effective 2/15/12]

[Published 1/11/12]

[For replacement pages for IAC, see IAC Supplement 1/11/12.]

ARC 9971B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 490.135 and chapter 489, the Secretary of State amends Chapter 40, "Corporations," Iowa Administrative Code.

The rules in Chapter 40 specify actions related to applications and filing requirements for corporations, including the payment and refund of fees. This amendment to Chapter 40 adopts new rule 721—40.8(488,489,490), which codifies the existing fees and procedures for filing biennial reports pursuant to Iowa Code sections 488.210, 489.209 and 490.1622. In collecting the fees associated with Iowa Code sections 488.210, 489.209 and 490.1622, the Secretary of State has followed the established procedures of previous Secretaries of State for collecting the fees. These procedures were not codified by previous Secretaries, and the current Secretary of State wishes to clarify compliance with Iowa Code chapter 17A. No new fees or increases to current fees will be added by the adoption of rule 721—40.8(488,489,490).

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin as **ARC 9860B** on November 16, 2011. This amendment was also Adopted and Filed Emergency and

SECRETARY OF STATE[721](cont'd)

published in the Iowa Administrative Bulletin as **ARC 9861B** on the same date. Public comments were received. A suggested change to also include the biennial report fees that currently exist under Iowa Code chapter 488 has been incorporated into the rule. Under Iowa Code chapter 488, biennial reports must also be filed for limited partnerships. As with limited liability companies and corporations, the Secretary of State's office is currently collecting fees for filing biennial reports. No additional fees are created by including references to Iowa Code chapter 488 in this rule.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 488.210, 489.209 and 490.1622.

This amendment will become effective on February 15, 2012, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following new rule 721—40.8(488,489,490):

721—40.8(488,489,490) Biennial reports. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

40.8(1) A limited partnership or foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 488.210.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is \$30. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(2) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is \$30. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(3) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 490.1622.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by a secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is \$30. This fee must be paid by check, credit card, or secretary of state charge account.

[Filed 12/21/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9970B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 490.135, the Secretary of State amends Chapter 40, "Corporations," Iowa Administrative Code.

SECRETARY OF STATE[721](cont'd)

The rules in Chapter 40 specify actions related to applications and filing requirements for corporations. This amendment adds new rule 721—40.9(490), which requires that a registered agent if filing online provide an e-mail address through which to receive notices and other communication pursuant to Iowa Code sections 490.120 and 490.135.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on November 16, 2011, as **ARC 9859B**. Public comments were received. A suggested change has been incorporated in the adopted rule and clarifies that e-mail addresses will be classified as private information and collected for the purpose of providing official correspondence from the Secretary of State's office.

After analysis and review of this rule making, no substantial impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 490.

This amendment will become effective on February 15, 2012.

The following amendment is adopted.

Adopt the following new rule 721—40.9(490):

721—40.9(490) Online filing requirements. The following requirements apply to the electronic filing of documents and the certification of electronic documents.

40.9(1) Registered agents who file documents electronically must provide an e-mail address to the secretary of state.

a. An e-mail address disclosed in compliance with this rule shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the secretary of state.

b. The secretary of state may use e-mail for official correspondence with an entity, except when law requires delivery by United States mail.

40.9(2) For filings requiring an online account, an applicant must follow the terms and conditions on the secretary of state's Internet Web site for each electronic filing.

40.9(3) All correspondence related to an electronic filing shall be handled electronically in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D.

40.9(4) Documents filed electronically shall be accompanied by the appropriate fee. This fee must be paid by check, credit card, or secretary of state charge account.

[Filed 12/21/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.

ARC 9969B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 9E.3 and 9E.7, the Secretary of State hereby amends Chapter 43, "Notarial Acts," Iowa Administrative Code.

The rules in Chapter 43 describe the requirements of a notarial act, including the effects of notarial acts under law. This amendment adds new rule 721—43.6(9E) pertaining to the revocation of a notary appointment pursuant to the requirements of the Iowa Administrative Procedure Act set forth in Iowa Code sections 17A.12 and 17A.18.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on November 16, 2011, as **ARC 9857B**. Public comments were received. A suggested change, which replaces the term "license" with the term "appointment," has been incorporated into the adopted rule. The change allows for more consistency by using a term already used within Iowa Code chapter 9E, specifically Iowa Code section 9E.3(1), which provides the Secretary of State's authority to revoke an "appointment."

SECRETARY OF STATE[721](cont'd)

After analysis and review of this rule making, no substantial impact on jobs has been found. Although the rule addresses revocation of notaries' appointments, notarizing is typically only one aspect of the job and little to no impact on jobs would exist.

This amendment is intended to implement Iowa Code sections 9E.3 and 9E.7.

This amendment will become effective on February 15, 2012.

The following amendment is adopted.

Adopt the following new rule 721—43.6(9E):

721—43.6(9E) Revocation of notary appointment. The secretary of state may revoke a notary appointment for cause. In the event that a formal complaint is received by the secretary of state, an investigation shall be conducted to determine if there is sufficient cause for revocation. The secretary of state's office shall provide forms to complainants and notaries as required under this rule. Every direction of every instruction shall be complied with and each question or portion of every form answered in the same manner as if the forms and instruction were embodied in this rule.

43.6(1) The notary complaint and the notary's response to the complaint are subject to the following procedures:

a. A formal complaint must be submitted to the secretary of state on a complaint form supplied by the secretary of state's business services office. Each submitted complaint form must comply with the form instructions and include the basis for the complaint. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint. Incomplete complaint forms shall be returned to the complainant with a brief explanation stating the basis for rejection.

b. The notary who is the subject of the complaint shall be notified by the secretary of state within 15 days from the receipt of the complaint. The secretary of state shall provide a copy of the complaint and a notary response form.

c. The notary may submit a completed response form for the purposes of the complaint investigation within 15 days of receipt of the copy of the complaint and response form. A completed notary response form must be submitted by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. The notary response form shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark. If the notary does not respond within 15 days, the assistant director of business services may still conduct the investigation and reach a decision based on the information available.

d. The complainant and notary shall be duly notified of the decision and the assistant director's basis for the decision.

43.6(2) If the investigation reveals sufficient cause for revocation, the secretary of state shall send a notice of revocation to the notary by certified mail, return receipt requested. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation in accordance with the requirements set forth in Iowa Code section 17A.12(2).

43.6(3) Delivery of the notice of revocation as referred to in subrule 43.6(2) shall constitute commencement of the contested case proceeding. Contested case hearings shall be afforded to all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Every contested case shall comply with the requirements for informal and formal disposition outlined in Iowa Code section 17A.12 and shall follow the contested case hearing procedures set forth in Iowa Code section 17A.12 and in rule 721—3.6(17A).

43.6(4) A written appeal form requesting a contested case hearing shall be obtained from the office of the secretary of state and submitted within 15 days from the date of receipt by the notary who is the subject of the complaint of the decision of the assistant director of business services. A written appeal form must be submitted in writing by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. A request for hearing shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark.

SECRETARY OF STATE[721](cont'd)

a. If no appeal form is submitted to the secretary of state's office, the notary appointment is effectively revoked in accordance with Iowa Code sections 9E.3 and 9E.7. The assistant director of business services may proceed in the manner outlined in paragraph 43.6(4) "c."

b. If an appeal form is received, notice of the contested case hearing shall be prepared by the assistant director of business services and mailed by certified mail, return receipt requested, to the notary who is the subject of the complaint. The notice shall be sent at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties and shall follow the notice requirements set forth in rule 721—3.5(17A). If the notary fails to appear or participate in a contested case proceeding after proper service of notice, the assistant director of business services shall proceed in the manner outlined in paragraph 43.6(4) "c."

c. A default decision may be granted or the assistant director of business services may proceed with the hearing and make a decision in the absence of the notary who is the subject of the complaint. The notary shall be duly notified of the decision and of the assistant director's basis for the decision. A decision by the assistant director may be vacated in accordance with Iowa Code section 17A.12(3). The decision is considered final unless a further appeal is initiated by the notary within 20 days of the date of notification or mailing of the decision.

43.6(5) Any notary who is the subject of the complaint may file an application for rehearing, stating the specific grounds and the relief sought within 20 days after the issuance of any final decision by the assistant director of business services in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application.

a. The director of business services shall review the application for rehearing and notify all the parties of record if a rehearing has been granted. If a rehearing has been granted, the director of business services shall conduct the rehearing.

b. An application for rehearing shall be deemed to have been denied unless the secretary of state grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

43.6(6) A notary who is the subject of the complaint and who is aggrieved or adversely affected by a final decision of the secretary of state may seek judicial review of that decision by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides or has its principal place of business. Proceedings for judicial review shall be followed as provided in Iowa Code section 17A.19(2).

[Filed 12/21/11, effective 2/15/12]

[Published 1/11/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/12.